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Paper No. 14

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DIRECTOR OFFICE
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In re Application of: Butterworth)
Application No.: 09/338,035)
Filed: June 22, 1999) **DECISION ON PETITION TO**
Attorney Docket No.: GB919990026US1) **ACCEPT CORRESPONDENCE AS**
For: DATA PROCESSING SYSTEMS) **TIMELY FILED UNDER NOTICE OF**
AND METHOD FOR PROCESSING) **POSTAL EMERGENCY**
TASKS IN SUCH SYSTEMS)

This is a decision on the petition filed August 18, 2003 by Ido Tuchman to withdraw the holding of abandonment under 37 CFR § 1.181 or alternatively as a petition to revive under 37 CFR § 1.137(a). The petition is being considered as a request to accept correspondence that would have been filed except for a postal emergency within the meaning of 35 U.S.C. § 21(a) and 37 CFR § 1.6(e). The notice of postal service interruption and emergency was posted on the USPTO web site on August 15, 2003 and was terminated with the notice dated August 19, 2003.

BACKGROUND

Feb 14, 2003	Final rejection mailed (Paper No. 6)
May 3, 2003	After-final response filed (Paper No. 7)
Jun 2, 2003	Advisory action mailed (Paper No. 8)
Aug 15, 2003	Request for Continued Examination, extension of time, associate power of attorney, change of address, and amendment filed (Paper Nos. 9-11)
Aug 18, 2003	Petition filed (Paper No. 13)
Sep 11, 2003	Non-final Office action mailed setting new shortened statutory period (Paper No. 12)

ISSUES

The petition of August 18, 2003 states the application was abandoned due to a failure to timely respond to the Final Office Action dated February 14, 2003. It is accompanied by a declaration by Ido Tuchman, Reg. No. 45,924. That declaration states a response was being prepared on August 14, 2003, but that due to the blackout that affected the northeastern United States, the practitioner could not print and file the necessary papers. The RCE, amendment, and extension of time were filed by Express Mail on August 15, 2003.

DECISION

In considering petitioners' submission in accordance with the guidelines set forth in the USPTO notices:

Correspondence that would have been filed with the USPTO under 37 CFR 1.10 on Thursday, August 14, 2003, through Saturday, August 16, 2003, but which was not filed due to the USPS service interruption, should now be filed under the USPTO under 37 CFR 1.10 with a statement that the correspondence would have been deposited with the USPS ..., but for this designated interruption in the "Express Mail" service of the USPS.

The notice states these provisions "do not provide for the granting of a filing date to correspondence as of the date on which it would have been filed but for other exigencies, such as the unavailability of a computer or word processing equipment."

The practitioner's statement does not indicate whether the papers filed via Express Mail on August 15, 2003 would have been filed under 37 CFR § 1.10 or § 1.8 on August 14, 2003 but for the power outage. That question notwithstanding, the practitioner's statements found in paragraphs 7 and 8 of Ido Tuchman's declaration negate the attempt to have the correspondence accepted as timely due to postal service interruptions. Specifically, the practitioner acknowledges that other exigencies, such as the unavailability of computer equipment precluded the timely filing of the correspondence.

In the alternative, the petition must meet at least three conditions in order to accept the correspondence as timely filed under 37 CFR § 1.8(b):

1. Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
2. Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
3. **Includes a statement that attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission.** If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

[Emphasis added.]

As the practitioner has noted in the petition, the papers were not filed until August 15, 2003. Therefore, the declaration is not accepted as a personal knowledge statement of the previous timely mailing of the correspondence since the filing needed to occur on or before August 14, 2003.

The papers filed August 15, 2003 included an associate power of attorney with an embedded change of address signed by Derek S. Jennings appointing Ido Tuchman as an associate. As Mr. Jennings himself does not have a power of attorney, he is not empowered to make such an appointment nor is he empowered to change the address of record for this application. Therefore, this petition is being mailed to the last official address of record. See 37 CFR §1.33(a)(2) and MPEP § 405.

The practitioner is also reminded that changes of correspondence address

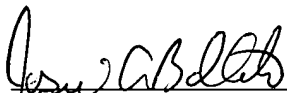
should be provided in a manner calling attention to the fact that a change of address is being made. Thus, the mere inclusion, in a paper being filed for another purpose, of an address which is different from the previously provided correspondence address, without mention of the fact that an address change is being made would not ordinarily be recognized or deemed as instructions to change the correspondence address on the file record.

See MPEP § 601.03.

The petition is **DISMISSED**.

The Office erroneously issued an action on the merits in response to applicant's filing dated August 15, 2003. That action is hereby vacated and **withdrawn**.

If the petitioner desires further review of this decision, petitioner should file a Request for Reconsideration within two (2) months of the mailing date of this decision. After that period, the file will be forwarded to the Office of Petitions for consideration of the petition under 37 CFR § 1.137(a). Telephone inquiries should be directed to the undersigned at 703-308-0269.



Josie A Ballato

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